The Law We Made at Nuremberg Haunts Us in Vietnam, P. 3

A More Candid Progress Report Than McNamara's on The War

"There doesn't seem to be any clear direction to our military activities; we don't seem to be getting anywhere. . . . The Vietcong keep going on no matter how many search-and-destroy missions. The North Vietnamese troops keep coming down no matter how many air raids. . . . Even guerrilla war, you would think, should be achieving more visible results after all this time and with all the firepower. . . ."—Wall Street Journal *editorial, November 4.*

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The Billions Mao's New Missile May Cost Us

What, precisely, had Peking wrought? Nothing more than Western intelligence sources had predicted all along: the Chinese have built a short-range nuclear missile.

—Time Magazine, *November 4.*

Those who disparage the Chinese nuclear missile do a disservice. Its consequences will cost us billions of dollars. It may unleash a new stage in the arms race, and bring nearer the time when men begin to go underground in search of security from their own nuclear weapons. Let us try to spell out a few of these consequences:

A Reckless Promise in Malaysia

1. In Malaysia President Johnson promised a U.S. nuclear umbrella for Asian nations which feel threatened by Chinese nuclear power. The Thais are getting ready to ask us for a tactical missile system. Japan may soon want U.S. missiles to protect it from China. Taiwan and the Philippines, South Korea and South Vietnam would join the line-up. The British, expecting a more or less formal guarantee to India, are offering Polaris submarines for a joint Indian Ocean Nuclear Force (*U.S. News & World Report,* Nov. 14) "to bring Anglo-American protection to that part of the world." As the size of the Chinese force grows, the cost of these countermeasures will grow with it.

2. Our major Asian allies are no more likely than were our major European allies to rest content with a U.S. nuclear umbrella. The same considerations which moved them in Europe will move them in Asia. The British built a nuclear force of their own because they felt that without it they would have no hope of an effective voice in nuclear policy. In this sense it can be said that the British built nuclear forces as a protection against us, i.e., against arbitrary or unilateral decisions by the U.S. The French built their own *force de frappe* to prevent the kind of deal made over their head by Washington and Moscow at the time of Suez. Asian powers like Japan and India capable of achieving a nuclear force in the near future may fear similar deals between Washington and Peking.

3. We may find ourselves proposing in Asia the kind of MLF formula we have suggested in Europe. An Asian MLF might look for a time like a way of staving off proliferation. We may also find that this whets the appetite in Japan as it has in Germany for independent forces, free of the U.S. veto. The argument may be advanced in Japan that it would be unsafe to depend on a U.S. which may prove reckless. As a small crowded island country, Japan's national existence might be ended in a modern nuclear war. But an independent Japanese nuclear force may raise in us the same kind of anxieties as an independent German nuclear force. We may begin to fear another Pearl Harbor, this time nuclear. Japan might prove more of a menace than China, as Germany proved more of a menace than Russia. Thus we can see how the emergence of China as a nuclear power threatens to destroy the balance of power to which we had become accustomed since World War II.

4. The most unsettling consequence of all has to do with the anti-ballistic missile. Secretary McNamara has opposed the construction at this time of an anti-missile against the Soviets, but he has suggested that it might be advisable to build a "little" anti-missile system against the relatively few missiles China may be able to muster against us in the next decade. But once anti-missiles begin to go up, a new phase of the arms race will begin. Just as we watch intently for any sign of an anti-missile in the Soviet Union, the Russians fear its appearance here. "One of the gravest implications of the [Chinese] test for the Soviet Union," *The Times* of

(Continued on Page Four)

A Vote of No-Confidence In LBJ

Two years ago the country voted against Goldwater. This year it voted against Johnson. The Manila conference and the last minute decision to forego campaigning for some minor surgery saved face for the President. Had the vote come after the kind of cross-country campaign Johnson planned last spring, the election returns would have been crushing. The Republican gain in the House was bigger than their own most optimistic forecasts; overnight, with seven Governorships won, the GOP has a whole new stable of Presidential hopefuls—Romney, Reagan, Rhodes, two Rockefellers. The racial backlash was not as bad as feared. We regret the defeat of the police review board in New York but welcome in Brooke of Massachusetts the first Negro Senator since Reconstruction. "Your home is your castle" Mahoney was defeated in Maryland and Maddox at press time didn't seem to be the winner in Alabama. Disquiet over Vietnam played its part in the Democratic losses. There will be two new Republican Senators, Hatfield of Oregon and Percy of Illinois who defeated Democratic hawks, including Douglas who spoiled a liberal record by being a faithful follower of the China Lobby.

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What Do LBJ and McNamara Mean in Saying the War Is "Levelling Off" —

When Guerrillas Can Shell Saigon and Blow Up Nearby Ammunition Dumps?

The situation in Vietnam bears little resemblance to the optimistic gloss put on it by pre-election press conferences at LBJ's ranch:

1. Even the Saigon area is vulnerable. On the night of Oct. 28 guerrillas blew up the Longbinh arms depot, largest in South Vietnam, only 12 miles from Saigon. "Units of the 1st Infantry," the AP reported (*Wash. Star,* Oct. 29), "had just finished a week-long sweep" of the area. The depot is sealed off "with multiple rows of barbed wire fence and guarded by military policemen and a team of dogs" (*NY Times* Oct. 29). Yet guerrillas "with grenades, automatic weapons and mortar fire" (AP in *Star* above) broke through, killing two U.S. soldiers and wounding 5 to 10 others. The huge munition explosion which followed shook Saigon, sending an orange fireball over the city. An artillery officer was quoted (*NY Times*) as saying he thought it was a nuclear blast.

Only One Mile From the Heart of the City

This was followed four days later by an equally sensational exploit, the shelling of Saigon during the National Day * celebration Nov. 1 when 8 persons including one U.S. Naval officer were killed and more than 30 (including 5 Americans) wounded. The shelling was done with 75 mm recoilless rifles from a point on the Saigon river only a mile from the center of the capital. Helicopter crews failed to find any trace of the attackers.

2. *Politically*: No sooner had the Constituent Assembly finished organizing when it rebelled against that provision of the decree establishing it which gives the military junta a veto. More than 20 speakers in a stormy 3-hour session (UPI in *Wash. Daily News* Nov. 8) demanded that the military be stripped of this power. The big landowners and old-line politicians who dominate the Constituent Assembly may be far to the right but they differ from the junta in three vital respects (1) they favor civilian rule, (2) they are mostly Southerners and (3) many of them want negotiations for peace, and are uninterested in "reconquest" of the North. The same forces are reflected in the Cabinet split hastily swept under the rug before Manila. It did not end with the resignation of Finance Minister Au Truong Thanh, a civilian, a Southerner and a trained economist in a government "almost void in administrative and technical expertise" (Ward Just in *Wash. Post* Oct. 28). Cabinet opposition is still centered on Ky's police chief, Gen. Loan, accused of trying to set up a police state.

3. *Pacification*: Of all the fraudulent terminology in this fraudulent war, first prize goes to this Madison Avenue euphemism. A long AP survey we saw only in an early edition of the *Baltimore Sun* Nov. 6 provided a glimpse of what it means. "The only way to be sure a peasant does not operate as a secret Viet Cong member," the AP said, "is to kill him. . . . Often an area remains cleared only until the Americans clear out. . . . Danang in the north long has been secured by U.S. Marines who landed 18 months ago" *but* "five miles away the territory is insecure" One sentence in this survey illuminates the brutal realities. It said "One village so persistently resisted pacification that finally it was destroyed." Just like that, as if we had God's mandate.

Another Sneaky Escalation

"On 25 October at 0800, five warships of the U.S. 7th fleet intruded into the territorial waters in Quang Binh province, about 8-10 kilometers from the coast, and shelled a number of populated areas north of Dong Hoi town. At 0945 U.S. warships again shelled this area. Then at 1400 they bombarded Sen Thuy area in Le Thuy district."

—From North Vietnam's protest to the International Control Commission charging this coastal shelling was a new escalation of the war (Hanoi radio Oct. 26).

"Saigon, Nov. 5—The U.S. is using naval guns to augment air strikes against enemy coastal shipping off North Vietnam for the first time, sources here acknowledged tonight. . . . Destroyers were first deployed on regular patrols off southern North Vietnam Oct. 25, but the official announcement of the first naval gunfire against shore targets was delayed. Officials here gave no reason for the delay but it was understood tonight the delay was to avoid possible political repercussions that might affect the Manila conference then in progress."—*Ralph H. Kennan in* Baltimore Sun *Nov. 6.*

*** National Day, it should be noted, celebrates the overthrow of Diem in 1963. The popularity of the event among the Vietnamese on our side sheds a sardonic light on the judgment of Secretaries McNamara and Rusk who were praising his regime as an "economic miracle" within a few months of his overthrow, and on the good sense of Johnson who in 1951 called Diem the Churchill of Asia!**

A Few Stray Items on the Steps Taken To Insure LBJ A Warm Welcome

"The generous reception at the airport didn't just happen. From the 'Well Done, Mr. President' banner, to the 150 feet of red carpet, to the free flags and free transportation, the accent was on orchestration. . . . Agriculture Dept. officers were scouring the corridors drumming up welcomers . . . employes of HEW found mimeographed invitations on their desks. . . . Calls went out from the UPO to its seven neighborhood centers asking delegations. . . . The decision to bus the school children to the airport was reached in a phone call from Tobriner ["Mayor" of DC] to School Superintendent Hansen. . . . Tobriner issued a proclamation calling on all citizens to greet the President in a 'truly heartfelt expression.' . . . Tobriner would not comment when asked whether the White House had suggested the gesture."

—Washington Post, *Nov. 3, on LBJ's local welcome.*

"On the whole, the reception [in Asia] was overwhelmingly friendly. Discounting the huge contrived demonstrations such as that in Seoul where a large part of the population got their orders to turn out."

—Marquis Childs back from Manila Wash. Post *Nov. 4.*

"In Korea the cops kicked their way into crowds and used rifle-butts on the skulls of dissenters. In Thailand they stood with burp guns trained on school children."

—Pete Hamill back from Manila, N.Y. Post *Nov. 5.*

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Only the Lawyers' Guild Intrepid Enough to Commemorate the Anniversary

It's Become Dangerous to Mention What Happened 20 Yrs. Ago in Nuremberg

The Nuremberg trial 20 years ago was intended not only to punish German leadership for crimes against humanity but to establish precedents which might discourage their repetition. Here in Washington Nov. 5 the National Lawyers' Guild held a meeting to commemorate the anniversary. This was, it is discouraging to note, the only conference of its kind in the world. The meeting was held in a board room of the National Lawyers Club. There were no more than 50 in attendance, mostly older lawyers, with 3 reporters and a girl from Canadian Broadcasting Company to cover the proceedings. It was clear that this was an anniversary about which the country could not care less.

The Year the Cold War Began

The United Nations staff seems to be so unaware that originally its legal counsel, and Under Secretary, Constantin Stavropoulos, was to address the luncheon. At the last minute the UN instead sent a young man, Maxim Tardu, from the Human Rights Commission, who delivered a lecture on international law which was as discreet as an encyclopaedia article. It was noteworthy chiefly for its account of the maze of subcommissions, drafts, revisions and amendments, in which the UN's International Law Commission has become hopelessly lost since it was instructed by the General Assembly in 1947 to prepare a draft code of offenses against the peace and security of mankind based on the Nuremberg Judgment and the UN Charter. That was the year the cold war began, and made both sides nervous at any mention of Nuremberg.

Three veterans of Nuremberg were speakers at the conference. Mary Kaufman, the chairman, was on the U.S. prosecution team. Prof. John Fried, of New York's City University, was a U.S. legal consultant. The venerable but vigorous Prof. Quincy Wright was legal adviser to former Attorney General Frances Biddle, one of the U.S. judges.

Prof. Fried spoke with a scholar's love of the long evolution which lay behind the principles applied at Nuremberg, including the work of "that immortal Jesuit, Suarez" who first held that heathens and heretics were not outside the law, a principle both sides in the cold war are still reluctant to recognize. Prof. Wright's topic was "the crime against peace," and he touched in passing (see box below) on the war in Vietnam, a topic which hung like a menacing but rarely mentioned cloud over the proceedings.

The final speaker was Leonard Boudin, who has made a shining record as defender of civil liberties. He now represents a number of clients resisting the draft on the ground that the Vietnamese war offends their consciences and the principles established in the postwar Nazi trials. One of these principles was that those guilty of war crimes were not allowed to escape judgment by pleading that they were only carrying out "superior orders." This precedent is being cited in the draft cases. Boudin said the government argues that the individual may never be sent to Vietnam, or if sent, may do nothing more unlawful than to cook for his army mates. The plea, one Circut Court has already held, is therefore premature. "The difficulty with holding that the defense is premature," Mr. Boudin said, "is that if carried to a logical extreme it may also be posthumous." This was the lightest moment in a sad day.

The Nuremberg Pledge and The Law

"It may seem ironic that the first serious effort to revitalize Nuremberg into a binding legal and moral precedent has been undertaken by citizens of this country who assert that their own government has engaged in an illegal war in Vietnam in violation of international law and morality. Yet there is logic to this development. Justice Jackson, our chief representative and principal architect of the Nuremberg trials, repeatedly—almost passionately—asserted: 'And let me make clear that while this law is first applied against the German aggressors—it must condemn aggression by any other nations, including those which sit here in judgment'."

—Ernest Goodman, president Nat'l Lawyers Guild.

'Initiation of invasions of other countries. . . . Atrocities or offenses against persons or property . . . including but not limited to murder, ill treatment or deportation . . . of civilian population from occupied territory . . . ill-treatment of prisoners of war . . . wanton destruction of cities, towns or villages. . . ."

—Allied Control Law No. 10 promulgated in 1945 for the trial of war criminals.

Prof. Quincy Wright Says Most of Us Are Either Isolationists or Imperialists

'The assumption by the 'great powers' that they have a responsibility to intervene with military force unilaterally to maintain order, especially in neighboring zones (as the U.S. in the Caribbean and the Soviet Union in Eastern Europe) or to maintain ideological principles such as 'to contain communism' or 'to liberate oppressed people' has induced aggressions. The initiation of such aggressions as the Anglo-French intervention in Suez (1956), the Soviet intervention in Hungary (1956), the Chinese invasion of India (1962), the U.S. toleration of a military expedition to Cuba (1961) and the U.S. intervention in Vietnam (1964) and Santo Domingo (1965) would seem to be crimes against peace under the Nuremberg principles. Consequently the great powers seek to forget these principles.

"The failure of world opinion to understand and accept the image of the world order assumed by the Nuremberg Charter and the United Nations Charter has obstructed the effectiveness of these instruments. They assume that the only feasible and reasonably satisfactory world order under present conditions is an international order of peacefully coexisting states each free to develop its own culture in its own way without encroachment on the others. . . .

"Such a world order is different from an order of isolated nationalism resting only on a balance of military power or an order of imperialism dominated from a single center with superior power. But most people, especially in the United States, are either isolationists or imperialists. They want either to keep out of the world or to remake it in their own image."

—Prof. Quincy Wright, dean of American international law scholars, speaking on "The Supreme Crime—The Crime Against Peace" at the National Lawyers' Guild conference.

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How A Poor Country Could "Detour" Around Our Anti-Missiles

(Continued from Page One)

London reported from Moscow Oct. 29, "is that it might ultimately involve it in an anti-ballistic missile race with the United States. This is because China's eventual capacity to deliver a nuclear-tipped missile on the North American mainland might force the United States into developing an extensive anti-missile system." This would force both big powers to embark on an expensive, dangerous and unknown course.

The Secret Debate Already On

Within the military bureaucracy and the military-industrial complex, this is the $64 billion dollar question in the secret debates which have already begun on the fiscal '68 budget. The public is all but unaware, though the issues are momentous. The Joint Chiefs of Staff and their allies in Congress have been pressing hard for the construction of an anti-missile system. McNamara has vetoed this on the ground that there is no anti-missile system in sight which could keep U.S. fatalities below "some tens of millions" in any Soviet attack.* This spells co-existence or co-destruction. But the appearance of anti-missiles would upset this equation and force each side into counter measures: more missiles, deeper shelters, *anti*-anti-missiles. Fallout shelters would be needed on both sides to protect one's own people from the fallout of one's own anti-missiles, and the cost of the first "primitive" Nike X system is estimated at a $8 to $30 billions "down-payment" and $1 to $5 billion annually after that.

But one of the many ways to "detour" around an anti-missile system was indicated by Dr. Jerome Wiesner, Kennedy's science adviser, when he estimated that a blast shelter program would be necessary, at a cost of 40 to $50 billions, because "both sides still have the option of high-altitude major blasts that could ignite cities and create lots of fires." We would soon be building our cities underground.

The anti-missile is not a magic gadget guaranteed to flip off enemy missiles as a remote control switch flips off TV programs. It can be countered by more and bigger missiles, by more, and more ingenious, "decoy" warheads, and perhaps by entirely new and more devilish methods for killing human beings. All this in reply to a system which can never really be tested, except in nuclear war, when it will be too late to know. As Dr. Jeremy J. Stone points out in his book, "Containing the Arms Race" the whole issue of the anti-missile "is beyond computation and untestable. . . . Who really knows whether it will work at all?" While our scientists go on devising these fantastically intricate and costly drawing board nightmares, a poor country like China can get around an anti-missile system by putting H-bombs on a few submarines or even merchant ships and threatening if attacked to set them off in the harbors of New York and San Francisco.

(This was the second of three pieces on the China missile. Next Week: The One Way Out.)

* I am indebted to a first-rate 8-part series on the anti-missile in the Bedford, Mass., Standard-Times by Everett S. Allen which was later sent out in abbreviated form by the Associated Press (see Washington Star, Oct. 30).

Out of Both Sides of Their Mouths

Q. Mr. Secretary . . . you gave no estimate of the level of bombing activity in 1967. Could you do so?

A. I mentioned that we have been flying somewhat more than 25,000 attack sorties a month and I didn't anticipate any significant increase.

—McNamara at LBJ's ranch Nov. 5.

Tokyo—Wm. P. Bundy, U.S. Assistant Secretary of State for Far Eastern Affairs was reported today to have told Japanese government officials that the U.S. might intensify its bombing of North Vietnam.

—Associated Press ticker same day.

We suspect the volume of truth increases with the distance from American ballot boxes. McNamara's forecast was part of a press conference designed to create the impression the war was going so well in Vietnam we could slow down our military effort next year.

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